



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

L. Preston Bryant, Jr.
Secretary of Natural Resources

NORTHERN VIRGINIA REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
(703) 583-3800 Fax (703) 583-3801
www.deq.virginia.gov

David K. Paylor
Director

~~Jeffery A. Steers~~
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO ENNSTONE, INC. FOR FREDERICKSBURG SAND AND GRAVEL – FULKS PIT

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1316.C, 10.1-1307.D, and 10.1-1309, between the State Air Pollution Control Board (SAPCB) and Ennstone, Inc. for the purpose of resolving certain alleged violations of the air permits and regulations as specified in SECTION C of this Order.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in VA Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.

6. “NRO” means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
7. “Regulations” refers to the Regulations for the Control and Abatement of Air Pollution for the Commonwealth of Virginia.
8. “VAC” means Virginia Administrative Code.
9. “Ennstone” means Ennstone, Inc., a corporation certified to do business in Virginia, and its affiliates, partners, subsidiaries, and parents. Ennstone, Inc. is the owner and operator of the Fredericksburg Sand and Gravel Plant located in Spotsylvania County.
10. “Fulks Pit” or “Plant” means the Fredericksburg Sand and Gravel Plant located in Spotsylvania County, Virginia.
11. “NOV” means Notice of Violation.
12. “NSPS” means New Source Performance Standards.
13. “ASTM” means Standards from the American Society for Testing and Materials.
14. “VEE” means Visible Emissions Evaluations.

SECTION C: Findings of Fact

1. Fredericksburg Sand and Gravel is a division of Ennstone, Inc., an international group of companies that supplies a diverse range of products and services to the construction, building, drainage, and rail industries.
2. Ennstone’s Fredericksburg Sand and Gravel Plant, also known as “Fulks Pit” which is the subject of this Order, is a stone crushing and sand and gravel processing plant located at 1500 Mills Drive in Spotsylvania County, Virginia.
3. The Plant operates under a DEQ General Permit (“Permit”) dated March 19, 2007.
4. DEQ staff conducted an inspection of the Plant on January 14, 2008, to evaluate compliance with the General Permit and with the sections of the New Source Performance Standards for Nonmetallic Mineral Processing located in 40 C.F.R. Part 60, Subpart OOO, which have been incorporated into the General Permit.
5. During the January 14, 2008 inspection, the representatives for the Plant were unable to provide DEQ staff with the required emission records.

6. During the January 14, 2008 inspection, DEQ staff noted several conveyors, diesel generators, and one stone crusher in operation at the Plant. The conveyor moves aggregate from the pit to the processing area and is powered by a 500kW Caterpillar diesel generator. All other plant equipment appeared to be powered by a single 1250kW generator. According to a Plant representative, the 1250kW generator was brought onsite December 31, 2007, to replace a 1000kW generator that was originally onsite. DEQ did not receive notification of this modification.
7. DEQ staff also noted at the January 14, 2008 inspection that no throughput records for the amount of stone crushed were available, no fuel throughput records were available for review during the inspection, no fuel certifications were available to demonstrate that the fuel used in the Plant equipment meets ASTM specifications for No. 1 or No. 2 distillate oil or diesel fuel, no notification was received by DEQ of the actual date of construction of the Facility or actual start up date of the emission unit, no information regarding the 500kW generator had been received by DEQ, and no notification or test results were received by DEQ of the required visible emission evaluation of the plant's crusher.
8. DEQ subsequently issued an NOV to Fredericksburg Sand and Gravel on January 31, 2008. The NOV cited the following violations:
 - Violation of 9 VAC 5-50-50 A, and Permit Article 6 Condition D (1-3), for failure to furnish written notification to DEQ of the actual date on which construction of any emission unit commenced within 30 days after the commencement date, and for failure to furnish the actual startup date of the emission unit within 15 days of the startup.
 - Violation of 9 VAC 5-50-20 G.1 for failure to conduct opacity observations within 60 days after achieving the maximum production rate at which the affected facility will be operated but no later than 180 days after initial startup of the Facility and violation of Permit Article 6 Condition D (3) for failure to furnish written notification to DEQ of the anticipated date of VEEs for affected facilities subject to 40 C.F.R Part 60, Subpart OOO at least 30 days prior to the test date.
 - Violation of 9 VAC 5-510-120(1) for failure to provide written notification to DEQ, including a revised spreadsheet and a plant layout or flow diagram each time equipment and/ or an emissions unit is installed or relocated at a facility at least 15 days before the equipment is installed at a facility unless otherwise approved by the regional director.
 - Violation of Permit Article 2 Condition D (2) for failure to demonstrate that the fuel consumed by stationary diesel engines at the Facility did not exceed 331,022 gallons per annual period.

- Violation of Permit Article 2 Condition E for failure to certify that the fuel used in stationary diesel engines meets ASTM requirements for No.1 and No.2 distillate oil or diesel fuel.
 - Violation of 9 VAC 5-510-220(B) for failure to document the amount of stone crushed at the Facility so as to maintain records for each emission unit or groups of emission units sufficient to determine the actual emissions of the nonmetallic mineral processing facility.
9. DEQ received a written response to the NOV from Ennstone representatives on February 6, 2008. DEQ also received a letter dated February 25, 2008, noting that the Facility had submitted its annual report to DEQ, as required by the Permit. The letter also confirmed that VEE testing would be carried out in March, 2008. An Ennstone representative later received his VEE certification from Eastern Technical Associates on March 18, 2008. This certification served as the necessary qualification to conduct the VEE testing.
 10. DEQ met with Ennstone, Inc. representatives on March 21, 2008 to discuss the violations noted in the January 31, 2008 NOV and the enforcement action.
 11. DEQ subsequently received VEE testing protocol from the Facility on April 10, 2008. This protocol was approved by DEQ on April 18, 2008. The VEE testing was conducted at the Fulks Pit location on April 18, 2008. The test results indicate that the crusher passed the VEE testing.
 12. Following the March 21, 2008 meeting, Ennstone, Inc. representatives submitted fuel consumption records and stone crushing records to DEQ on April 15, 2008. In addition, DEQ received fuel certification information on April 23, 2008. This Information was reviewed by DEQ, and no further deficiencies were found.
 13. The development and maintenance of onsite records pertaining to the operation of the portable crusher and fuel certifications, as required by Appendix A of this Order, will better ensure that the Facility operates in compliance with the applicable requirements set forth in its Permit.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 10.1-1316(C), orders Virginia Paving Company, and Virginia Paving Company agrees, to comply with the specific actions given in Appendix A of this Order.

In addition, the Board orders Virginia Paving Company, and Virginia Paving Company also agrees, to pay a civil charge in the amount of \$6,812.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the “Treasurer of Virginia,” delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218-1104

Either on a transmittal letter or as a notation on the check, Ennstone, Inc. shall indicate that this payment is submitted pursuant to this Order and shall include the Federal Identification Number for Ennstone, Inc..

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Ennstone, Inc., for good cause shown by Ennstone, Inc. or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Ennstone, Inc. admits the jurisdictional allegations, but neither admits nor denies the factual findings, and conclusions of law contained herein.
4. Ennstone, Inc. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.


5. Ennstone, Inc. declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
5. Failure by Ennstone, Inc. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. Ennstone, Inc. shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Ennstone, Inc. shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Ennstone, Inc. shall notify the DEQ-NRO Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director in writing within 72 hours of learning of any condition above, which the parties intend to assert will result or has resulted in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

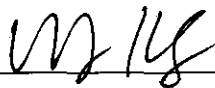
8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

9. This Order shall become effective upon execution by both the Director or his designee and Ennstone, Inc.. Notwithstanding the foregoing, Ennstone, Inc. agrees to be bound by any compliance date that precedes the effective date of this Order.
10. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Ennstone, Inc.. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Ennstone, Inc. from their obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
11. By its signature below, Ennstone, Inc. voluntarily agrees to the issuance of this Order.
12. The undersigned representative of Ennstone, Inc. certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Ennstone, Inc. to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Ennstone, Inc..

And it is so ORDERED this day of August 26, 2008.


Thomas A. Faha, Regional Director
Department of Environmental Quality
Northern Regional Office

Ennstone, Inc. voluntarily agrees to the issuance of this Order.

By: 
Title: Co. Secretary
Date: 8/22/08

Commonwealth of Virginia

City/County of _____

The foregoing ~~instrument~~ document was signed and acknowledged before me this 22nd day of August 2008 by Randy Helms, ^{who} ~~is~~ ^{is} Secretary of Ennstone Inc on behalf of Ennstone Inc
Stacy D. Helms NRRI: 350414
Notary Public my commission expires on 12-31-2008

The foregoing document was signed and acknowledged before me this ____ day of
_____, 2008, by _____, who is
_____ of Ennstone, Inc., on behalf of Ennstone, Inc..

Notary Public

My commission expires: _____.

APPENDIX A

Ennstone, Inc. shall:

- 1) Create and maintain a binder which shall contain all necessary records pertaining to the operation of the portable crusher located at the Fulks Pit location, as well as a fuel certification for each delivery of fuel.
- 2) This binder shall be maintained onsite and available to DEQ inspectors upon request. Ennstone, Inc. shall verify compliance with this provision to DEQ in writing by August 1, 2008.

Documents to be submitted to DEQ, other than the civil charge payment described in Section D of this Order, shall be sent to:

NRO Air Compliance Manager
Department of Environmental Quality
13901 Crown Court
Woodbridge, VA 22193